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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABHINAV BHATNAGAR,
Plaintiff,

vs.

JASON INGRASSIA, individually and in
his official capacity; COUNTY OF
CONTRA COSTA; and CITY OF
SAN RAMON.

Defendants.

Case No.: Case No. CV07-02669 (CRB)

**AFFIDAVIT OF JENNY HUANG
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

I, JENNY HUANG, state under penalty of perjury as follows:

1. I am counsel for Plaintiff Abhinav Bhatnagar in the above-referenced action. I submit this affidavit in support of Plaintiff's motion for a protective order to exclude Defendant Jason Ingrassia from the deposition of Richard Ha.

1 Mr. Bhatnagar's Criminal Case

2 2. Plaintiff was arrested by Defendant Ingrassia on May 20, 2006 at the Valero Gas
3 Station in San Ramon, California. Attached as Exhibit 1 is a copy of the police report authored
4 by the officer for this arrest.

5 3. Among other statements, Defendant Ingrassia claimed in his police report that the
6 officer saw Plaintiff driving, that he saw Plaintiff make an illegal u-turn, and that he pulled
7 Plaintiff over at the gas station for a traffic violation. (Exh. A at p.2.)

8 4. As a result of the arrest, Plaintiff was required to defend himself against criminal
9 charges. On November 27, 2006, a hearing was held in the criminal case based on a motion to
10 suppress the evidence. A copy of relevant portions from the transcript of that hearing are attached
11 hereto as Exhibit 2.

12 5. Consistent with the statements in his police report, Defendant Ingrassia gave
13 testimony under oath at the suppression hearing on November 26, 2006. (Exh. B at pp. 5-9.)

14 6. A gas station attendant who was working at the time of Plaintiff's arrest also
15 testified as a witness at the suppression hearing. Contrary to the officer's testimony, Mr. Ha
16 testified that Plaintiff was getting gas at the gas station when he was approached by Defendant
17 Ingrassia several minutes later. Contrary to the officer's testimony, Mr. Ha testified that he did
18 not see the emergency lights on Defendant Ingrassia's patrol car turned on that night. (Exh. B at
19 pp. 28-29.)

20 7. The Honorable Charles Treat granted the suppression motion and dismissed all
21 criminal charges against Plaintiff. A copy of the minute order on November 27, 2006 is attached
22 hereto as Exhibit 3.

23 8. In granting the suppression motion, Judge Treat concluded, "I do not credit the
24 officer's testimony. It appears to me as most credible, that the officer was trolling for drunk
25

1 drivers across from the bar and picked on this defendant because of his race.” (Exh. C at 61.)

2 Mr. Bhatnagar’s License Suspension

3 9. As a result of his arrest, Plaintiff was also required to defend himself against
4 proceedings to suspend his license. Relevant portions of the transcript from the hearings before
5 the Department of Motor Vehicles (“DMV”) are attached hereto as Exhibit 4.
6

7 10. Defendant Ingrassia testified under oath at Plaintiff’s DMV hearing on July 26,
8 2006. Consistent with his police report, the officer testified that he saw Plaintiff driving, that he
9 saw Plaintiff make an illegal u-turn, and that he pulled Plaintiff over at the gas station for a traffic
10 violation. (Exh. D at 16:14-16, 25:11-18.) Defendant Ingrassia also admitted that during the
11 arrest, he had some conversation with Plaintiff about Plaintiff’s ethnicity, but the officer did not
12 recall the specifics of that conversation. (*Id.* at 47:7-13.)
13

14 11. Richard Ha also testified as a witness at Plaintiff’s DMV hearing on October 11,
15 2006. Mr. Ha testified that on May 20, 2006, Plaintiff was parked at a gas pump getting gas and
16 that there was no police car in front or behind Plaintiff’s car. (Exh. D at 62:2-11.) Contrary to
17 the officer’s testimony, Mr. Ha stated that Plaintiff was standing outside of his car when
18 Defendant Ingrassia first approached Plaintiff and started questioning him and was not sitting in
19 his vehicle at that time as the officer had claimed. (Exh. D at 68:6-11, 27:5-10.) Mr. Ha also
20 testified that it did not look to him as though Defendant Ingrassia had followed Plaintiff into the
21 gas station and he did not see the emergency lights on the officer’s patrol car turned on that night.
22 (Exh. D at 66:3-13, 17-22, 69:4-22.)
23

24 12. By decision issued on October 16, 2006, Hearing Officer Lee concluded that the
25 suspension of Plaintiff’s license was warranted. However, that decision was set aside by the
26 DMV on March 30, 2007, upon rehearing after the criminal charges against Plaintiff were
27 dismissed. A copy of the final decision by Hearing Officer Beireis-Molnar on March 30, 2007 is
28

1 attached hereto as Exhibit 5.

2 Mr. Bhatnagar's Traffic Citation Issued on Sept. 29, 2006

3 13. On September 29, 2006, Defendant Ingrassia initiated a traffic stop on Plaintiff
4 while he was driving in San Ramon. The officer issued Plaintiff a traffic citation, claiming that
5 Plaintiff made an illegal u-turn. A copy of the traffic citation is attached hereto as Exhibit 6.

6
7 14. I represented Plaintiff in the hearing for this traffic citation before Commissioner
8 Joel Golub on March 5, 2007. While waiting for Plaintiff's case to be called, I saw Defendant
9 Ingrassia and other accompanying police officers look at Plaintiff and myself in a hostile manner.

10 15. Throughout Plaintiff's testimony, I observed Defendant Ingrassia looking at
11 Plaintiff in a hostile manner, smirking and snickering at him, and at one point he started laughing
12 at Plaintiff.

13
14 16. On March 14, 2007, Commissioner Golub found Plaintiff not guilty of the traffic
15 violation and dismissed the citation against him. A copy of the minute order from *People v.*
16 *Abhinav Bhatnagar*, Case No. 968674-2, on March 14, 2007 is attached hereto as Exhibit 7.

17 Internal Affairs Investigation

18 17. I represented Plaintiff at his interview on January 19, 2007 with two internal
19 affairs investigators at the Sheriff's Department.

20
21 18. During the course of the two-hour interview, the investigators primarily focused
22 their questioning on facts related to the basis for Plaintiff's arrest, although those facts had
23 already been litigated in Plaintiff's favor in his criminal case. The investigators asked Plaintiff
24 very few questions about his allegations of harassment and retaliation against Defendant
25 Ingrassia.

26 19. At the conclusion of the interview of Plaintiff, I requested that the investigators
27 advise Defendant Ingrassia that he is not to have any communications with Plaintiff. I was
28

1 assured by Sergeant Anderson that Defendant Ingrassia would be so advised.

2 20. During my questioning of Defendant Ingrassia at the traffic court hearing on
3 March 5, 2007, Defendant Ingrassia testified that he was never advised by anyone with the
4 internal affairs division that he was not to have any communications with Plaintiff.

5 21. At the request of one of those investigators, namely Sergeant Ted Anderson, I
6 provided him with copies of witness statements submitted to the DMV. Sergeant Anderson
7 advised me that he already had a copy of the audio recording from the DMV hearings, as well as
8 the transcript from the suppression hearing on November 27, 2006.

9 22. After the interview of Plaintiff, Sergeant Anderson phoned Plaintiff and
10 questioned him directly, after I previously requested that he direct any future communications
11 with Plaintiff to his counsel.

12 23. While the internal affairs investigation was still pending, our office advised
13 Sergeant Anderson of the decision in *People v. Eli*, Case No. 1-128472-8, in which the Honorable
14 William Kolin dismissed criminal charges in a separate case in which Defendant Ingrassia was
15 the arresting officer. Sergeant Anderson was further advised that Judge Kolin's decision was
16 based upon negative findings of credibility against Defendant Ingrassia.

17 Harassment of Richard Ha

18 24. On May 29, 2007, I received a phone call from Richard Ha, a witness who
19 previously testified on Plaintiff's behalf. Mr. Ha sounded terrified and told me that he believed it
20 was Defendant Ingrassia who came to his home just minutes earlier. He asked to meet with me
21 right away.

22 25. When I met with Mr. Ha that evening, the witness expressed a lot of fear and
23 concern for his safety if he continued to be involved in this lawsuit.

24 26. When I showed Mr. Ha a photograph of Defendant Ingrassia, he confirmed that the

1 officer who came to his home earlier resembled the person depicted in the photograph.

2 27. Our office is investigating this matter to determine the identity of the officer who
3 appeared at the home of Richard Ha on May 20, 2007 and whether that officer was acting in
4 retaliation for Mr. Ha's involvement as a witness in Plaintiff's case. At this time, we have not yet
5 received any conclusive information.
6

7 28. On October 30, 2007, Plaintiff requested production of the dispatch log and audio
8 recordings for any 911 calls received by the Sheriff's Department relating to Mr. Ha's residence.
9 Defendant County of Contra Costa is required to produce any responsive documents by
10 November 29, 2007.

11 Deposition of Plaintiff on October 17, 2007

12 29. On October 12, 2007, I received a notice for Plaintiff's deposition scheduled on
13 October 17, 2007.
14

15 30. It was not until I arrived for Plaintiff's deposition on October 17, 2007 that I was
16 informed that Defendant Ingrassia would be present during Plaintiff's deposition.

17 31. Plaintiff was very anxious and stressed that the officer would be present during his
18 deposition testimony.

19 32. Based on my prior experience with Defendant Ingrassia at the traffic court hearing
20 on March 5, 2007, I requested that Defendant Ingrassia be seated at a location in the room where
21 he could not look at Plaintiff in a manner that would interfere with his testimony. Counsel for
22 Defendant Ingrassia, James Fitzgerald, refused my request and the officer was instead seated at
23 the deposition table, across the table from where Plaintiff was seated.
24

25 33. After asserting his objections to Defendant Ingrassia's attendance at his deposition,
26 Plaintiff agreed to proceed with the deposition in the officer's presence.

27 34. Also in attendance at Plaintiff's deposition was Lieutenant Eric Navarro, an
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1 individual designated by Assistant County Counsel Gregory Harvey as the county's
2 representative. Lieutenant Navarro was assigned to the Sheriff Department's internal affairs
3 investigation of Defendant Ingrassia and is knowledgeable about the facts underlying this case.
4 Plaintiff did not object to the presence of Lieutenant Navarro at his deposition.

5
6 35. In my opinion, the officer's presence during Plaintiff's deposition affected my
7 client's ability to focus his testimony and to articulate himself in a clear manner.

8 36. In my opinion, Defendant Ingrassia's mere presence during the deposition caused
9 my client unnecessary fear, stress, and anxiety and interfered with his ability to testify freely and
10 without intimidation.

11 37. A few hours before Plaintiff's deposition terminated, Defendant Ingrassia left the
12 deposition early. I noticed a considerable difference in Plaintiff's ability to testify clearly,
13 concisely, and in a focused manner after the officer left the room.

14
15 Deposition of Mr. Ha

16 38. On October 13, 2007, Mr. Ha called and left a message informing me that he had
17 been served with subpoena. He stated that he did not want to be involved as a witness anymore
18 because he felt that he was being threatened by the police.

19 39. On October 16, 2007, Mr. Ha decided to proceed with his deposition. The witness
20 requested and Plaintiff's counsel agreed to represent Mr. Ha at his deposition if it should proceed.

21 40. With regard to the deposition of Richard Ha scheduled for October 23rd, I
22 requested on behalf of the witness that Defendant Ingrassia agree not to attend Mr. Ha's
23 deposition, that the defendants provide a Vietnamese interpreter, and that the deposition be
24 rescheduled for the afternoon to accommodate his needs for childcare.

25
26 41. While Mr. Fitzgerald agreed to provide an interpreter and postpone the deposition
27 until the afternoon, he asserted the officer's right as a party to attend Mr. Ha's deposition.

28 42. By letter dated October 24, 2007, I advised defendants' counsel that Mr. Ha
AFFIDAVIT OF JENNY HUANG IN SUPPORT OF PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

1 required a postponement of his deposition to allow Plaintiff to file a motion for a protective order
2 for Mr. Ha. Both Mr. Fitzgerald and Assistant County Counsel Gregory Harvey agreed to
3 stipulate to shortened time on Plaintiff's motion for a protective order pursuant to Rule 26(c).

4 43. On November 7, 2007, I received a deposition subpoena for Richard Ha to be
5 deposed on December 7, 2007 at 9:30am.

6 44. At this time, the parties in this action are scheduled to appear for a mediation
7 before Wendy Rouder on December 7, 2007 at 10:00am.

8 45. In addition to Mr. Ha, Defendants seek to depose two other witnesses during the
9 first week of December. Plaintiff does not object to Defendant Ingrassia's presence during either
10 of those depositions.

11 46. Mr. Ha does not object to Lt. Navarro's presence at his deposition.

12 47. Plaintiff does not object to Lt. Navarro's presence at any future depositions.

13 I declare under penalty of perjury that the foregoing is true and correct. Executed on
14 November 21, 2007 in Oakland, California.

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18 /s/ Jenny Huang
19 JENNY HUANG
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